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CHARLES ELMORE

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

State of Missouri, at the Relation of Missouri Insurance Company, a Corporation, Relator,
Appellant,

vs.

Frederick Gehner, as Assessor of the City of St. Louis and as President of the Board of Equalization of the City of St. Louis; A. R. Schollmeyer, Clyde Carson, William L. Heckmann and Joseph J. Lichtenfeld, as Members of the Board of Equalization of the City of St. Louis,
Appellees.

No. 222.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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LON O. HOCKER,
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INDEX.

	Page
Petition for writ of certiorari	1
Assignments of error	12
The opinions of the court below	17
Jurisdiction	18
A. Statutory provisions sustaining jurisdiction	18
B. Date of decree and date of application for appeal	20
C. Nature of case and ruling below	21
D. Cases believed to sustain jurisdiction on certiorari	23
Statement of case	25
Specification of errors	25
Summary of argument	28
A. Illegal taxation of, or failure to exempt, Government bonds	28
B. Due process of law and equal protection of the laws	29
Argument	31
A. Illegal taxation of, or failure to exempt, Government bonds	31
B. Due process of law and equal protection of the laws	39
Conclusion	45

Authorities Cited.

Buist v. Charleston, 57 S. E. (S. C.) 862	45
Chapman v. Goodnow, 123 U. S., l. c. 548	24
Chicago, Burlington & Quincy Railroad Co. v. Chicago, 166 U. S. 226	24
Farmers Bank v. Minnesota, 232 U. S. 516	8, 9, 23, 28,
Green Bay & Mississippi Canal Co. v. Pattern Paper Co., 172 U. S., l. c. 66-68	24
Home Ins. Co. v. New York, 134 U. S., l. c. 598	28, 32

Home Savings Bank v. Des Moines, 205 U. S., l. c. 509, 521 ..... 29, 32, 37
Judicial Code, Par. (b), Section 237, as amended, Section 344, Title 28, U. S. Code Annotated..... 18
Longest v. Langford, 274 U. S. 499..... 23
McCulloch v. Maryland, 4 Wheat. 316..... 9, 23, 28, 31
Miller v. Milwaukee, 272 U. S. 713..... 23, 28, 32, 36
Missouri, Kansas etc. Ry. Co. v. Elliott, 184 U. S., l. c. 32, 34, 38
National Life Ins. Co. v. United States, 277 U. S. 508 ..... 8, 23, 28, 32
New York ex rel. Bryant v. Zimmerman, 278 U. S. 63. 24
Northwestern Mutual Life Ins. Co. v. Wisconsin, 275 U. S. 136 ..... 8, 9, 23, 28, 32, 36
Quaker City Cab Co. v. Pennsylvania, 277 U. S., l. c. 402 44
St. Louis, Iron Mountain & Southern Railway Co. v. Starbird, 243 U. S., l. c. 599..... 24
Sec. 6386, R. S. Mo. 1919..... 3, 5, 8, 12, 21, 25, 38, 45
Sections 6471, 6816 and 6825, U. S. Comp. Stat. 1918 ..... 9, 26, 31
Southern Railway Co. v. Green, 216 U. S., l. c. 412.... 43
State ex rel. American Automobile Ins. Co. v. Gehner, 8 S. W. (2d) 1057..... 40, 44
State ex rel. American Automobile Ins. Co. v. Schramm, 271 Mo. 223..... 8, 29, 38, 39, 44
State ex rel. Central States Life Ins. Co. v. Gehner, City Assessor, et al., 8 S. W. (2d) 1073..... 5, 29, 40, 41
State ex rel. Citizens' Ins. Co. v. Gehner, 8 S. W. (2d) 1066 40
State ex rel. Hyde v. Buder, 315 Mo. 791, l. c. 798, 287 S. W., l. c. 309..... 29, 39

State ex rel. Indemnity Co. of America v. Gehner, City Assessor, et al., 8 S. W. (2d) 1067.....5, 30, 40, 41
State ex rel. International Life Ins. Co. v. Gehner, 8 S. W. (2d) 1067..... 40
State ex rel. Missouri State Life Ins. Co. v. Gehner, City Assessor, et al., 8 S. W. (2d) 1068...5, 30, 29, 40,41
Supervisors v. Stanley, 105 U. S. 305.....23, 28, 32
Sunday Lake Iron Co. v. Wakefield, 247 U. S., l. c. 352 43
United States Code Annotated, Section 861, Title 28.. 19
United States Code Annotated, Section 861a, Title 28. 19
United States Code Annotated, Section 861b, Title 28. 20
U. S. Rev. Stat., Sec. 3701, Sec. 6816, U. S. Comp. Stat. 1918 23
Waco v. Amicable Life Ins. Co., 248 S. W. (Tex. Com. of Ap.) 332 .....29, 33
Weston v. City Council of Charleston, 2 Pet. 448 .....9, 23, 28, 31

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PETITION FOR WRIT OF CERTIORARI.

The petition of Missouri Insurance Company, a corporation, respectfully represents:

That the Missouri Insurance Company is and was at all times herein mentioned a life insurance company organized

and existing under the laws of the State of Missouri, having its principal office in the City of St. Louis, Missouri, and at all times engaged in such business in said State of Missouri; that the appellee, Frederick Gehner, is and was at all times mentioned herein the duly elected, qualified and acting Assessor of the City of St. Louis, Missouri, and as such head of the assessment division established by the Charter of said city, and President of the Board of Equalization of said city, and that the appellees, A. R. Schollmeyer, Clyde Carson, William L. Heckmann and Joseph J. Lichtenfeld, with the said Frederick Gehner, compose the Board of Equalization of said city by due appointment of the Mayor thereof; that said Frederick Gehner, as such Assessor, and as President of the Board of Equalization, as aforesaid, is and was at all times herein mentioned the official custodian of all the records, documents and files of the Assessor's office of the City of St. Louis, and also of the Board of Equalization of said city; that subsequent to June 1, 1925, and as of date June 1, 1925, as required by law, your petitioner made its tax return in due form to the Assessor of the City of St. Louis aforesaid, of all of its property for taxation; that in said return and as a basis for arriving at the taxable value of its property, your petitioner set down its personal property as follows, to wit:

Money deposited in bank or other safe place		$ 5,265.33
Bonds, whether state, county, town, city, township, incorporated or unincorporated companies of the value of	$255,000.00	
Government bonds	94,000.00	349,000.00
Total personal assets subject to taxation in the State of Missouri		$354,265.33

(Tr., pp. 12-17.)*

Your petitioner's said return also showed deductions claimed by it under the provisions of Revised Statutes of Missouri 1919, Section 6386, as follows:

Amount of legally required reserve necessary to reinsure its outstanding risks on June 1, 1925, deposited with the State of Missouri for the protection of policyholders	$326,522.60
Amount of unpaid policy claims June 1, 1925	6,964.00
Total deductions	$333,486.69

(Tr., pp. 12-17.)

That on the face of said return and the facts therein stated the net amount of your petitioner's personal property subject to taxation on June 1, 1925, was $20,778.64; that notwithstanding said facts the appellees, respondents below, acting as the Board of Equalization of the City of

*All references to the record are to the pages of the certified, unprinted transcript or record prepared by the Clerk of the Supreme Court of Missouri, on file with the Clerk of the Supreme Court of the United States. The record has not yet been printed.

St. Louis, Missouri, did, on March 31, 1926, duly notify your petitioner of the intention of said Board to assess your petitioner for personal taxes for the year 1926 on the return of your petitioner as of June 1, 1925, as follows:

Cash deposited in bank or other safe place	$ 5,260.00
Solvent bonds	349,000.00

and by said notice required your petitioner to appear before said Board at a time stated and show cause why such assessment should not be made.

That thereafter, in conformity to said notice, your petitioner, by its officers and attorneys, appeared before said Board and a hearing was had under said notice; that upon said hearing said Board made its findings in accordance with the facts stated in said return, but said Board also found and determined that, notwithstanding the legally required reserve and unpaid policy claims amounted to $333,486.69, your petitioner was not entitled to deduct said sum from its assets amounting to $354,265.33, because, in the opinion of said Board, based upon the advice of the City Counselor of the City of St. Louis, Section 6386 of the Revised Statutes of Missouri 1919, under which your petitioner sought to deduct said legal reserve, was unconstitutional and in contravention of Article X, Sections 3, 4 and 7 of the Constitution of the State of Missouri requiring uniformity of taxation, and said Board thereupon arbitrarily fixed the amount of your petitioner's

net taxable personal property at the sum of $50,000.00 (Tr., pp. 12-17).

And thereafter, your petitioner, the appellant in the above-entitled cause, relator below, instituted an original proceeding by certiorari in the Supreme Court of the State of Missouri in the above-entitled cause and obtained a writ of certiorari against the appellees (Tr., pp. 1-7). In due time said cause came on for hearing before the Supreme Court of the State of Missouri, in banc, and after said Court had in other cases determined that said Sec. 6386, R. S. Mo. 1919, was not unconstitutional, and that deductions by life insurance companies, as claimed by your petitioner, were valid (State ex rel. Missouri State Life Ins. Co. v. Gehner, City Assessor, et al., 8 S. W. [2d] 1068; State ex rel. Central States Life Ins. Co. v. Gehner, City Assessor, et al., 8 S. W. [2d] 1073; State ex rel. Indemnity Co. of America v. Gehner, City Assessor, et al., 8 S. W. [2d] 1067).

On consideration of said cause said Supreme Court of Missouri, at the October Term, 1928, of said court, entered its opinion sustaining the assessment by the appellees in the sum of $50,000.00, not upon the theory that Sec. 6386, R. S. of 1919, was unconstitutional, but on the theory that since your petitioner owned United States Government bonds in the sum of $94,000.00, and taxable assets in the sum of $354,265.33, both of which were subject to liabilities (legal reserve) aggregating $333,486.69, the net taxable assets should be determined by apportion-

ing the total liability (legal reserve) between the two classes of assets, according to their respective amounts, and then deducting from the taxable assets the liability so apportioned to that class, by which calculation the Court computed the net taxable assets of your petitioner as 79.03 per cent of the legal reserve and the value in money of said taxable assets as $90,710.80 (Tr., pp. 35-37).

In due time your petitioner filed its motion for a rehearing in said cause before said Supreme Court (Tr., p. 41). Said cause being an original proceeding in said Supreme Court said motion for rehearing was in the nature of a motion for new trial. Prior to the handing down of said opinion neither the Board of Equalization nor said Supreme Court by any preliminary or prior ruling had suggested any construction or application of Sec. 6386, R. S. of Mo. 1919, which would contravene any provisions of the Federal Constitution or statutes or any decisions of the Supreme Court of the United States, so that upon the filing of said motion for rehearing there was presented to your petitioner its first opportunity to raise the federal questions herein mentioned. In its said opinion the Supreme Court of Missouri for the first time construed section 6386 as authorizing the apportionment of the legal reserve of domestic insurance companies between taxable and nontaxable assets, and for that purpose including in your petitioner's gross assets its nontaxable assets (in this case United States Government

bonds to the amount of $94,000.00) in calculating its net taxable assets under said section 6386.

In its said motion for rehearing, therefore (Tr., pp. 42-61), your petitioner at the first opportunity set up the following federal questions on account of which it attacked said opinion and asked that a rehearing be granted in said cause, to wit:

1. That said Supreme Court, by its opinion, refused to permit your petitioner to deduct the full amount of its reserve because it owned United States Government bonds in the sum of $94,000.00, whereas domestic insurance companies having no Government bonds might deduct the full amount of the legal reserve authorized by said section 6386, and that by such construction and application of section 6386 the Court contravened Section 1 of Article XIV of the Amendments to the Constitution of the United States, which provides that no state shall make or enforce any law which shall deprive any person of property without due process of law, or deny to any person the equal protection of the laws. Under said point of said motion it was contended that the opinion deprived your petitioner of its property without due process of law because its taxes were increased beyond the plain terms of the statute by the failure to deduct the full amount of its reserve, and that it deprived your petitioner of the equal protection of the laws because, on account of the mere circumstance that your petitioner owned exempt securities, a percentage of

its reserve was held to be not deductible, whereas other domestic insurance companies having no Government bonds would be permitted to deduct the full amount of such reserve.

2. That the effect of the opinion is to hold that Section 6386, R. S. of Mo. 1919, authorizes the full deduction of the reserve in case of domestic life insurance companies having no nontaxable assets, but requires that in case of your petitioner and other companies owning nontaxable securities, only a proportionate part of the reserve may be deducted, thereby rendering said section 6386 unconstitutional in that it would deprive your petitioner of its property without due process of law, and would deny to your petitioner the equal protection of the laws, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

3. That the method of calculating your petitioner's net taxable assets by including in its gross assets its Government bonds resulted in the taxation of a portion of your petitioner's tax-exempt Government securities, under which point your petitioner cited the following cases:

Farmers Bank v. Minnesota, 232 U. S. 516;
Northwestern Mutual Life Ins. Co. v. Wisconsin, 275 U. S. 136;
National Life Ins. Co. v. United States, 277 U. S. 508;
State ex rel. American Automobile Ins. Co. v. Schramm, 271 Mo. 223.

4. That the inclusion of your petitioner's nontaxable assets in its gross assets, for the purpose of determining its net taxable assets under section 6386, amounted to the taxation of at least a portion of its Government bonds, in violation of the provision of the Constitution of the United States (Section 8 of Article I) giving Congress power to borrow money on the credit of the United States, on which proposition your petition cited the following cases:

McCulloch v. Maryland, 4 Wheat. 316;
Weston v. City Council of Charleston, 2 Pet. 448;
Farmers Bank v. Minnesota, 232 U. S. 516;
Northwestern Mutual Life Ins. Co. v. Wisconsin, 275 U. S. 136.

5. That the inclusion of your petitioner's nontaxable securities in its gross assets in arriving at its net taxable assets as set forth in the opinion was in direct contravention and in violation of the express provisions of Sections 6471, 6816 and 6825, U. S. Comp. Stat. 1918, denying states and municipalities power to tax Government bonds.

Your petitioner further states that thereafter, on March 27, 1929, the said Supreme Court duly considered said motion for rehearing and modified its opinion by calculating the taxable assets as 84 per cent of the gross assets and the value in money of such net taxable assets as $74,136.52, and thereupon filed such modified opinion and overruled said motion for rehearing (Tr., pp. 38-40). The pertinent portion of such modified opinion is as follows:

"Section 6386 relates to the taxation of domestic insurance companies. With reference to every such company it provides that the net value of all its personal assets, or assets, or values, in excess of the legally required reserve necessary to reinsure its outstanding risks and unpaid policy claims shall be assessed and taxed as the property of individuals. The section of course deals only with property which is subject to taxation. The question in this case is: How shall the net value of the **taxable assets** be determined? Relator claims, inferentially, that it has invested its surplus in United States bonds, nontaxable assets, and that it has put its legal reserve and working capital into other securities which are subject to taxation, and that therefore the reserve and all other liabilities should be deducted from the taxable assets alone. But surplus, earnings, undivided profits, etc., are mere bookkeeping terms. The legal reserve is not a segregated fund; it is a measure of liability, a test of solvency; the amount that would be required to make a present settlement with all of relator's policyholders, or to reinsure its risks; it is an indebtedness (State ex rel. v. Missouri State Life Insurance Co. v. Gehner, 8 S. W. [2d], 1068, 1072). And relator's indebtedness, legal reserve and unpaid policy claims is a charge against all of its assets, both taxable and nontaxable.

"To put the question concretely: Relator's nontaxable assets amount to $94,000, its taxable assets to $590,265.33 (real, $142,000; personal, $354,265.33), both are subject to liabilities aggregating $333,486.69—what is the net value of the taxable personal assets under section 6386? We know of no more equitable way to determine such value than that of apportioning the

total liability between the two classes of assets (the taxable and the nontaxable) according to their respective amounts and then deducting from the taxable assets the liability so apportioned to that class. The taxable assets are approximately 84 per cent of the gross assets; 84 per cent of the aggregate liability is, in dollars and cents, $280,128.81; that sum deducted from the gross value in money of the taxable personal assets ($354,265.33) leaves $74,136.52, their net value. As this sum is greater than that at which relator's personal property was assessed by the Board of Equalization, its record should not be quashed (State ex rel. American Automobile Insurance Company v. Gehner, 8 S. W. [2d] 1057). Our writ is accordingly quashed and the proceeding dismissed."

Your petitioner further states that on said March 27, 1929, said Supreme Court of Missouri, upon the filing of said modified opinion, entered its order quashing said writ of certiorari issued in said cause and dismissed said proceeding, which constitutes a final judgment in said cause against which your petitioner has no further remedy in said Supreme Court of Missouri (Tr., p. 41), and that by its opinion and judgment aforesaid, and the overruling of your petitioner's said motion for rehearing, said Supreme Court of Missouri necessarily determined the federal questions set forth by your petitioner in its said motion for rehearing, contrary to the contentions of your petitioner, as aforesaid.

The final opinion of the Supreme Court of Missouri is reported in 15 S. W. (2d) 334, but is not yet reported in the official State Reports.

And your petitioner further states that in the aforesaid judgment and proceeding certain errors were committed, to the prejudice of your petitioner, relator in said cause, in the following particulars, to wit:

ASSIGNMENTS OF ERROR.

I.

The Supreme Court of Missouri erred in construing Section 6386, R. S. Mo. 1919, as authorizing the apportionment of the legal reserve between the taxable and non-taxable assets of your petitioner, and for that purpose including in your petitioner's gross assets its Government bonds in the sum of $94,000.00 in calculating the net value of its taxable personal assets, thereby resulting in the taxation of at least a portion of petitioner's said bonds, in violation of the provisions of the Constitution of the United States (Section 8 of Article I), giving Congress the right to borrow money on the credit of the United States, as construed by numerous decisions of the Supreme Court of the United States.

II.

The Supreme Court of Missouri erred in finding and holding that Section 6386, R. S. Mo. 1919, authorizes the

apportionment of the legal reserve, allowed to be deducted by said statute, between the taxable and nontaxable assets of domestic insurance companies, thereby discriminating against such insurance companies as might own Government bonds, in contravention of Section 1 of Article XIV of the Amendments to the Constitution of the United States, providing that no state shall make or enforce any law which will deprive any person of property without due process of law, or deny to any person equal protection of the laws. Such is true, because your petitioner's taxes are thereby increased beyond the plain terms of the statute (section 6386) by the failure to deduct the full amount of its reserve by reason of the mere circumstance that it owned tax-exempt Government bonds, and such action of said Court deprives your petitioner of the equal protection of the laws, because, on account of the mere circumstance that your petitioner owned exempt securities, a percentage of its reserve is held not to be deductible, whereas other domestic insurance companies having no Government bonds would be permitted to deduct the full amount of such reserve.

III.

The Supreme Court of Missouri erred in finding and holding that in calculating the net taxable assets of your petitioner under Section 6386, R. S. Mo. 1919, your petitioner's nontaxable or exempt securities should be included in its gross assets and the reserve apportioned between its

taxable and nontaxable assets, because to so hold would, in effect, result in taxing at least a portion of said Government bonds, in violation of the express provisions of United States Revised Statutes, Section 3701, United States Comp. Stat. 1918, Section 6816, denying states and municipalities the power to tax Government bonds, and contrary to numerous decisions of the Supreme Court of the United States.

IV.

The Supreme Court of Missouri erred in including in your petitioner's gross assets its tax-exempt Government bonds in the sum of $94,000.00, for the purpose of calculating its net taxable assets under the provisions of Section 6386, R. S. Mo. 1919, and in apportioning its reserve between its taxable and nontaxable assets, thereby resulting in the taxation of a portion of your petitioner's said Government bonds, and in an unwarranted and unlawful discrimination against your petitioner, a domestic insurance company owning Government bonds, by subjecting it to greater burdens of taxation upon taxable property because it owned some that is tax exempt.

Wherefore, your petitioner prays that a writ of certiorari may be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Missouri, requiring and directing that Court, by and upon a date certain, to be designated therein, to certify and send to this Court, for review and determination, a full, true

and complete transcript of the record and proceedings in said Court in the case lately pending therein, numbered 27,549, and entitled, State of Missouri at the Relation of Missouri Insurance Company, a Corporation, v. Frederick Gehner, as Assessor of the City of St. Louis, and as President of the Board of Equalization of the City of St. Louis, A. R. Schollmeyer, Clyde Carson, William L. Hackmann and Joseph J. Lichtenfeld, as Members of the Board of Equalization of the City of St. Louis, Respondents, and that the said judgment of the Supreme Court of Missouri may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Court shall seem just and proper.

And your petitioner will ever pray.

MISSOURI INSURANCE COMPANY,

By

JAMES C. JONES,
LON O. HOCKER,
FRANK H. SULLIVAN,
JAMES C. JONES, JR.,
RALPH T. FINLEY,
Counsel for Petitioner.

IN THE

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OCTOBER TERM, 1929.

State of Missouri, at the Relation of Missouri Insurance Company, a Corporation, Relator, Appellant, vs. Frederick Gehner, as Assessor of the City of St. Louis and as President of the Board of Equalization of the City of St. Louis; A. R. Schollmeyer, Clyde Carson, William L. Heckmann and Joseph J. Lichtenfeld, as Members of the Board of Equalization of the City of St. Louis, Appellees.	No. 222.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

THE OPINIONS OF THE COURT BELOW.

The original opinion of the Supreme Court of Missouri in this case is shown on pages 35 and 37 of the transcript on appeal filed in this court.

The modified or final opinion of the Supreme Court of Missouri is reported as State of Missouri ex rel. Missouri

Ins. Co. v. Gehner, City Assessor, et al., 15 S. W. (2d) 334, and is also found at pages 38 to 40 of the transcript herein.

The case has not yet been published in the official state reports.

II.

JURISDICTION.

A. Statutory Provisions Sustaining Jurisdiction.

Paragraph (b) of Section 237 of the Judicial Code, as amended, Section 344, Title 28, United States Code Annotated, is as follows:

> "(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had * * * or where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States; or where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held, or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the federal claim is sustained as where it is denied. * * *
>
> "(c) If a writ of error be improvidently sought and allowed under this section in a case where the proper

mode of invoking a review is by a petition for certiorari, this alone shall not be a ground for dismissal; but the papers whereon the writ of error was allowed shall be regarded and acted on as a petition for certiorari and as if duly presented to the Supreme Court at the time they were presented to the Court or Judge by whom the writ of error was allowed."

Section 861 of Title 28, United States Code Annotated, is as follows:

"No court having power to review a judgment or decree of another shall dismiss a writ of error solely because an appeal should have been taken, or dismiss an appeal solely because a writ of error should have been sued out; but where such error occurs the same shall be disregarded and the Court shall proceed as if in that regard its power to review were properly invoked (Sept. 6, 1916, c. 448, Sec. 4, 39 Stat. 727; Feb. 13, 1925, c. 229, Sec. 10, 43 Stat. 941)."

The Act of January 31, 1928, Chap. 14, Sec. 1, 45 Stat., being Sec. 861a, Title 28, United States Code Annotated, is as follows:

"The writ of error in cases, civil and criminal, is abolished. All the relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

The Act of January 31, 1928, Chap. 14, Sec. 2, 45 Stat., as amended April 26, 1928, Chap. 440, 45 Stat., being Sec.

861b, Title 28, United States Code Annotated, provides as follows:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

B. Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was originally entered on February 11, 1929 (Tr., pp. 35, 41).

Thereafter, on February 20, 1929, within the time allowed by Rule 21 of the Supreme Court of Missouri, the appellant, relator below and petitioner herein for writ of certiorari, filed its motion for a rehearing in said court (Tr., p. 41).

Thereafter, after considering said motion for rehearing, on March 27, 1929, the Supreme Court of Missouri overruled said motion for rehearing and modified its opinion in said cause (Tr., p. 62).

The petition for appeal herein was presented to the Chief Justice of the Supreme Court of Missouri on June 24, 1929, within three months after the date of the overruling of relator's motion for rehearing, and the appeal was allowed on said June 24, 1929 (Tr., pp. 76-77).

And now, after the docketing of the appeal herein in this court, the appellant has filed a petition for certiorari on the papers on which the appeal was granted and the transcript herein.

C. Nature of Case and Ruling Below.

Section 6386, Revised Statutes of Missouri 1919, is construed and applied by the original opinion of the Supreme Court of Missouri, as well as by the modified opinion in this case (Tr., pp. 35, 38). Said section 6386, so far as pertinent, is as follows:

> "Sec. 6386. **Home Companies Subject to What Tax.** —The property of all insurance companies organized under the laws of this state shall be subject to taxation for state, county, municipal and school purposes, as provided in the general revenue laws of this state in regard to taxation and assessment of insurance companies. Every such company or association shall make returns, subject to the provisions of said laws: First, of all the real estate held or controlled by it; second, of the net value of all its other assets or values in excess of the legally required reserve necessary to reinsure its outstanding risks and of any unpaid policy claims, which net values shall be assessed and taxed as the property of individuals."

By its opinion, the Supreme Court of Missouri, after referring to the provisions of Section 6386, R. S. Mo. 1919, states:

> "The question in this case is: How shall the net value of the taxable assets be determined? • • • We

know of no more equitable way to determine such value than that of apportioning the total liability between the two classes of assets (the taxable and the nontaxable) according to their respective amounts and then deducting from the taxable assets the liabilities so apportioned to that class" (Tr., pp. 35-37, 38-40).

The Supreme Court of Missouri then calculates the net taxable assets of relator by including in its gross assets the sum of $94,000.00, representing United States Government bonds owned by it, thus resulting in a net value of relator's assets amounting to $74,136.52, instead of $20,778.64, which would have been the result if the relator were permitted to deduct its Government bonds and also to deduct the reserve, as provided in section 6386.

By its motion for rehearing the relator contended that the Supreme Court of Missouri erroneously included the amount of relator's Government bonds in its gross assets in calculating the net taxable value of its personal property, and that the decision and opinion of the Supreme Court of Missouri was in violation of Section 8 of Article I of the Constitution of the United States, giving Congress power to borrow money on the credit of the United States, as construed by numerous decisions of the Supreme Court of the United States, and in contravention of the due-process and equal-protection clauses of Section 1, of Article XIV of the Amendments to the Constitution of the United States. By its motion for rehearing the relator also con-

tended that the construction of Section 6386, R. S. of Mo. 1919, by the Supreme Court of Missouri was in violation of the express provisions of U. S. Rev. Stat., Sec. 3701, Sec. 6816, U. S. Comp. Stat. 1918, denying states and municipalities the power to tax Government bonds (Tr., pp. 42-61). In other words, it was contended by relator that the construction and application of section 6386 by the Supreme Court of Missouri, as applied to domestic insurance companies owning Government bonds, made such section repugnant to the constitutional provisions aforesaid, and to the statute of the United States exempting Government bonds from taxation. And the Supreme Court of Missouri was particularly cited to the principles set forth in the following decisions of the Supreme Court of the United States on similar questions:

Farmers Bank v. Minnesota, 232 U. S. 516;
Northwestern Mutual Life Ins. Co. v. Wisconsin, 275 U. S. 136;
National Life Ins. Co. v. United States, 277 U. S. 508;
Miller v. Milwaukee, 272 U. S. 713;
Supervisors v. Stanley, 105 U. S. 305;
McCulloch v. Maryland, 4 Wheat. 316;
Weston v. Charleston, 2 Pet. 448.

D. **Cases Believed to Sustain Jurisdiction on Certiorari.**

The following decisions of this Court are believed to sustain jurisdiction on certiorari herein:

Longest v. Langford, 274 U. S. 499;

New York ex rel. Bryant v. Zimmerman, 278 U. S. 63;
Missouri, Kansas etc. Ry. Co. v. Elliott, 184 U. S., l. c. 536-537.

The decision of the Board of Equalization was based upon the theory that, although Section 6386, R. S. of Mo. 1919 authorized deduction of the reserve, it was unconstitutional. The Supreme Court of Missouri, however, having held in a companion case and in prior cases that said section was constitutional, proceeded to lay down for the first time in the history of the state the theory of arriving at the net taxable assets set forth in the opinion in this case. This was an original proceeding in the Supreme Court of Missouri, and relator's motion for rehearing in the state court afforded it its first opportunity to raise the federal question here urged. Said motion for rehearing was in the nature of a motion for new trial. The federal questions were expressly raised by the motion for rehearing, and by the opinion necessarily overruled. The record, therefore, sufficiently presents a federal question. See the following authorities:

Chicago, Burlington & Quincy Railroad Co. v. Chicago, 166 U. S. 226;
Missouri, Kansas & Texas Ry. Co. v. Elliott, 184 U. S., l. c. 533-535;
Green Bay & Mississippi Canal Co. v. Patten Paper Co., 172 U. S., l. c. 66-68;
St. Louis, Iron Mountain & Southern Railway Co. v. Starbird, 243 U. S., l. c. 599;
Chapman v. Goodnow, 123 U. S., l. c. 548.

III.

STATEMENT OF CASE.

A full statement of the facts in the case will be found on pages 1 to 12 of the petition for certiorari filed herewith and to which reference is made for such facts.

IV.

SPECIFICATION OF ERRORS.

1. The Supreme Court of Missouri erred in holding that for the purpose of determining the net value of relator's taxable personal assets under Section 6386, R. S. of Mo. 1919, it was proper to include in relator's gross assets its tax-exempt Government bonds in the sum of $94,000.00, and then apportion the total reserve between the taxable and nontaxable assets of relator, resulting in a finding that the net value of relator's taxable assets was $74,136.52, because said method of calculating relator's net taxable assets necessarily resulted in taxation, directly or indirectly, of a portion of relator's said Government bonds, in violation of Section 8 of Article I of the Constitution of the United States.

2. The Supreme Court of Missouri erred in holding that under Section 6386, R. S. of Mo. 1919, for the purpose of determining relator's net taxable assets, it was proper to include in relator's gross assets its tax-exempt Government bonds in the sum of $94,000.00 and apportion the

total reserve, or liability, between the taxable and nontaxable assets, resulting in a finding that relator's net taxable assets amounted to $74,136.52, because such method of calculating relator's net taxable assets necessarily resulted in a failure to exempt the said Government bonds from taxation, thereby violating the provisions of Section 3701, U. S. Revised Statutes (U. S. Comp. Stat. 1918, Section 6816) denying states and municipalities the power to tax Government bonds.

3. The Supreme Court of Missouri erred in finding and holding that it was proper under Section 6386, R. S. of Mo. 1919, to determine the net taxable value of relator's personal assets by including in its gross assets its tax-exempt Government bonds in the sum of $94,000.00, and apportioning the total reserve between the taxable and nontaxable assets in such proportion as the taxable assets bore to the gross assets, because such method of calculating relator's net taxable assets necessarily resulted in increasing relator's taxes beyond the plain terms of the statute by the failure to deduct the full amount of its reserve by reason of the mere circumstance that it owned Government bonds, thereby depriving the relator of its property without due process of law, in violation of the due-process clause of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

4. The Supreme Court of Missouri erred in finding and holding that it was proper, under Section 6386, R. S. of Mo. 1919, to determine the net taxable value of relator's

personal assets by including in its gross assets its tax-exempt Government bonds in the sum of $94,000.00, and apportioning the total reserve between the taxable and nontaxable assets in such proportion as the taxable assets bore to the gross assets, because such method of calculating such net taxable assets necessarily denied to the relator the right to deduct the full amount of its reserve because it owned tax-exempt Government bonds, thereby denying to the relator the equal protection of the laws guaranteed by Section 1 of Article XIV of the Amendments to the Constitution of the United States, whereas other domestic insurance companies having no Government bonds would be permitted to deduct the full amount of such reserve.

5. The Supreme Court of Missouri erred in holding that the full amount of relator's reserve should not be deducted because of the mere circumstance that it owned Government bonds in the sum of $94,000.00, thereby resulting in the taxation of a portion of relator's Government bonds and in an unwarranted and unlawful discrimination against those insurance companies owning Government bonds by subjecting them to greater burdens of taxation upon taxable property because of the ownership of some that is tax exempt.

6. The Supreme Court of Missouri, by its method of calculating the net taxable assets of the relator, erroneously diminishes the amount of legal reserve deductible under Section 6386, R. S. of Mo. 1919, and indirectly, if not di-

rectly, defeats the exemption guaranteed to owners of Government bonds, contrary to the provisions of United States Revised Statutes, Section 3701 (U. S. Comp. Stat. 1918, Sec. 6816), and contrary to the provisions of Section 8 of Article I of the Constitution of the United States and numerous decisions of the Supreme Court of the United States.

V.

SUMMARY OF ARGUMENT.

A. Illegal Taxation of, or Failure to Exempt, Government Bonds.

Government bonds owned by relator aggregating $94,000 are exempt under Section 8 of Article I of the Federal Constitution, giving to Congress the power to borrow money on the credit of the United States.

Said bonds are also exempt from taxation by states or municipalities under the express provisions of Section 3701, U. S. Rev. Stat. (U. S. Comp. Stat., Section 6816).

McCulloch v. Maryland, 4 Wheat. 316;
Weston v. City Council of Charleston, 2 Pet. 448, 469;
Farmers Bank v. Minnesota, 232 U. S. 516;
Northwestern Mutual Life Insurance Co. v. Wisconsin, 275 U. S. 136;
Miller v. Milwaukee, 272 U. S. 713;
National Life Ins. Co. v. United States, 277 U. S. 508;
Supervisors v. Stanley, 105 U. S. 305;
Home Ins. Co. v. New York, 134 U. S., l. c. 598;

Home Savings Bank v. Des Moines, 205 U. S., l. c. 509, 521;

Waco v. Amicable Life Ins. Co., 248 S. W. (Tex. Com. of Ap.) 332;

State ex rel. v. Schramm, 271 Mo., l. c. 227-228, 196 S. W. 21.

B. **Due Process of Law and Equal Protection of the Laws.**

The Supreme Court of Missouri has held Section 6386, R. S. of Mo. 1919, to be constitutional, and that the deduction therein allowed is not an exemption, but is an allowance of a deduction for debts owing by way of reaching a just amount of taxable property.

State ex rel. v. Schramm, 271 Mo., l. c. 227, 196 S. W. 21;

State ex rel. Hyde v. Buder, 315 Mo. 791, l. c. 798, 287 S. W., l. c. 309;

State ex rel. Missouri State Life Ins. Co. v. Gehner, 8 S. W. (2d) 1068, l. c. 1072-1073.

The Supreme Court of Missouri, by its opinion in this case, concedes that but for the ownership of Government bonds the relator would have been entitled to deduct the full amount of its reserve. In the companion cases said Supreme Court of Missouri expressly held that domestic insurance companies having no Government bonds were entitled to deduct the full amount of their reserve.

State ex rel. Central States Life Ins. Co. v. Gehner, 8 S. W. (2d) 1073;

State ex rel. Missouri State Life Ins. Co. v. Gehner, 8 S. W. (2d) 1068;
State ex rel. Indemnity Co. of America v. Gehner, 8 S. W. (2d) 1067.

The method of calculating the relator's net taxable assets set forth in the opinion of the Supreme Court of Missouri destroys the exemption from taxation given to owners of Government bonds by Section 8 of Article I of the Federal Constitution and by Section 3701, U. S. Rev. Stat., deprives the relator of its property without due process of law, denies to it the equal protection of the laws, and unlawfully discriminates against the relator and other companies owning Government bonds by refusing to permit the deduction of the full amount of the reserve as in case of those companies owning no Government bonds.

Cases, Point V, A, supra.

ARGUMENT.

A. Illegal Taxation of, or Failure to Exempt, Government Bonds.

While there is no express provision in the Constitution of the United States exempting Government bonds from taxation, ever since the decisions in McCulloch v. Maryland, 4 Wheat. 316, and Weston v. City Council of Charleston, 2 Pet. 448, it has been held that Section 8 of Article I of the Federal Constitution, giving Congress the power to borrow money on the credit of the United States, necessarily deprives the states of any power to tax federal securities, such as the bonds in question. In the Weston case, 2 Pet., l. c. 469, the Court said:

> **"The tax on Government stock is thought, by this Court, to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution."**

In addition to the above-mentioned provision of the Constitution there has long been in effect Section 3701, United States Revised Statutes (U. S. Comp. Stat., Sec. 6816), expressly denying to states and municipalities power to tax Government bonds. Under these provisions of the Federal Constitution and the statutes, this Court has uniformly held that any method of taxation or calculation of assets which directly or indirectly results in the

taxation of Government securities, in whatever form, is beyond the power of the several states and the municipalities of the several states.

In addition to the above-cited cases, see the following:

Farmers Bank v. Minnesota, 232 U. S. 516;
Northwestern Mutual Life Ins. Co. v. Wisconsin, 275 U. S. 136;
Miller v. Milwaukee, 272 U. S. 713;
Supervisors v. Stanley, 105 U. S. 305;
Home Insurance Co. v. New York, 134 U. S., l. c. 598;
Home Savings Bank v. Des Moines, 205 U. S., l. c. 509, 521;
National Life Ins. Co. v. United States, 277 U. S. 508.

In National Life Ins. Co. v. United States, 277 U. S. 508, we find an analogous situation. In that case Congress laid a tax on life insurance companies, based upon the sum of all interests and dividends and rents received, less certain deductions: (1) Interest derived from tax-exempt securities, if any; (2) a sum equal to 4 per cent of the company's legal reserve diminished by the amount of interest described in paragraph (1), and (3) seven other items not here involved. For the purpose of determining the net income of the company for the year 1921, the Collector included in the gross receipts of the company the income from tax-exempt securities, and while going through the form of deducting the amount of interest from tax-exempt

securities diminished the 4 per cent deduction of reserves by the amount of interest received from tax-exempt securities, and it was held that this defeated the exemption guaranteed to the owners of such securities. In holding the tax invalid, this Court said (277 U. S., l. c. 519):

> "The portion of petitioner's income from the three specified sources which Congress had power to tax—its taxable income—was the sum of these items less the interest derived from tax-exempt securities. **Because of the receipt of interest from such securities, and to its full extent, pursuing the plan of the statute, the Collector diminished the 4 per cent deduction allowable to those holding no such securities. Thus, he required petitioner to pay more upon its taxable income than could have been demanded had this been derived solely from taxable securities. If permitted, this would destroy the guaranteed exemption. One may not be subjected to greater burdens upon his taxable property solely because he owns some that is free. No device or form of words can deprive him of the exemption for which he has lawfully contracted.**"

In support of its decision in that case this Court cited the case of City of Waco v. Amicable Life Ins. Co., 230 S. W. (Tex. App.) 698, 248 S. W. (Tex. Com. of Ap.) 332. As shown by that case the State of Texas has a statute very similar to the Missouri statute requiring insurance companies to be taxed on real and personal property, but authorizing them to deduct their reserve. The Amicable Life Ins. Co., in 1919, owned personal property aggregat-

ing $2,287,780.26, included in which were United States Government bonds aggregating $906,050.00, which were admittedly exempt from state taxation under federal laws. The legal reserve was $1,631,754.06. The trial court held that the insurance company was entitled to deduct its reserve from its taxable personal assets or, in other words, that it was entitled also to deduct from its gross personal assets the full amount of its tax-exempt securities before deducting its reserve, which method left no taxable personal assets. The City appealed and the Texas Court of Appeals and also the Commission of Appeals affirmed the action of the lower court. The Commission of Appeals of Texas said (248 S. W., l. c. 333):

> "We have reached the conclusion that the trial court and the Court of Civil Appeals correctly held **that tax-free government securities cannot be taken into account in estimating the total value of the company's assets.**"

In Farmers Bank v. Minnesota, 232 U. S. 516, the question arose as to the power of the State of Minnesota to tax municipal bonds issued by a municipality of the Territory of Oklahoma, which was held to be an instrumentality and agency of the Federal Government. In that case the Court said (l. c. 526):

> "But we deem it entirely clear that a tax upon the exercise of the function of issuing municipal bonds is a tax upon the operations of the Government and not in any sense a tax upon the property of the munici-

pality. And to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them. * * * The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burden on the operations of government. It may be carried to an extent which shall arrest them entirely.

"It is on this ground that United States bonds have always been held exempt from taxation under authority of the states."

The taxing law of Minnesota under consideration provided the method of determining the **net taxable assets**, but in such calculation **the Government bonds were included in the gross assets.** With respect to the effect of this system the Supreme Court of the United States said (l. c. 528):

"It is, however, further suggested that the judgment under review does not sustain a tax upon the bonds as property, but only a tax upon the surplus of the savings bank, computed by taking into the account all of its assets, amounting to about $12,000,000, of which the bonds were only about $700,000, and deducting therefrom its liabilities. **But as the surplus is treated as property and taxed as such, it is obvious that some portion of the burden of the tax is attributable to the ownership of the municipal bonds.** In Bank of Commerce v. New York City, 2 Black. 620, it was held that the State of New York, **in taxing the**

> **capital of banks according to its valuation must leave out of the calculation that portion of the capital invested in the stocks, bonds or other securities of the United States not liable to taxation by the state.** And see Bank Tax Case, 2 Wall. 200; Home Savings Bank v. Des Moines, 205 U. S. 503, 509."

To a similar effect is Northwestern Mutual Life Ins. Co. v. Wisconsin, 275 U. S. 136.

In Miller v. Milwaukee, 272 U. S. 713, the plaintiff owned shares of stock in a corporation. A law of Wisconsin provided that corporations should be assessed on their income, after deducting interest on United States bonds. The interest on the United States bonds, of course, was credited to the surplus of the corporation. But the exemption was met by the State of Wisconsin by a provision that, while the stockholders were not taxed upon dividends received from corporations, the income of which was assessed, **yet if only part of the income of the corporation was assessed, only a corresponding part of the dividends or income received therefrom should be deducted from the income taxed to the stockholders.**

In holding an assessment under such law invalid, the Supreme Court of the United States said (l. c. 715):

> "It is a familiar principle that conduct which in usual situations the law protects may become unlawful when part of a scheme to reach a prohibited result. **If the avowed purpose or self-evident operation of a statute is to follow the bonds of the United**

States and to make up for its inability to reach them directly by indirectly achieving the same result, the statute must fail, even if but for its purpose of special operation it would be perfectly good. Under the laws of Wisconsin the income from the United States bonds may not be the only item exempted from the income tax on corporations, but it certainly is the most conspicuous instance of exemption at the present time. **A result intelligently foreseen and offering the most obvious motive for an act that will bring it about, fairly may be taken to have been a purpose of the act. On that assumption the immunity of the national bonds is too important to allow any narrowing beyond what the acts of Congress permit. We think it would be going too far to say that they allow an intentional interference that is only prevented from being direct by the artificial distinction between a corporation and its members."**

In Home Savings Bank v. Des Moines, 205 U. S., l. c. 521, where a method of taxing shares of stock failed to make allowance for the proper deduction of Government bonds in determining the taxable assets, this Court said:

"If by the simple device of adopting the value of corporation shares as the measure of the taxation of the property of the corporation that property loses the immunities which the supreme law gives to it, then national securities may easily be taxed, whenever they are owned by a corporation, and the national credit has no defense against a serious wound."

These principles have been recognized and followed by the Supreme Court of Missouri, as witness the case of State ex rel. v. Schramm, 271 Mo., l. c. 227-228, where the Supreme Court quoted with approval the decision in Farmers Bank v. Minnesota, 232 U. S., l. c. 528, and said:

> "In this case, as in that, the tax is a state property tax imposed upon a 'surplus' or net assets after deducting certain liabilities. The situation is the same, and the conclusion must be the same. Since the United States bonds involved exceed the whole surplus assessed and their exclusion leaves nothing assessable, it is unnecessary to consider the taxability of the railroad stock. The record of the Board of Equalization is quashed."

It follows from the foregoing authorities that the calculation by the Supreme Court of Missouri necessarily results in the taxation of a portion of relator's Government bonds. The provisions of Sec. 6386, R. S. of Mo. 1919, permit the deduction of the reserve, which in this case is admitted to be $333,486.69. Its taxable personal assets are $354,265.33. If we do not take into consideration Government bonds in the sum of $94,000.00, this leaves the sum of $20,778.64, after deducting the reserve. The Supreme Court of Missouri, however, for the purpose of determining the net taxable assets, adds the amount of the Government bonds, $94,000.00, to the taxable assets, and prorates the reserve between the taxable and the nontaxable assets, reaching the conclusion that since

the taxable assets are approximately 84 per cent of the aggregate liability, or $280,128.81, that sum deducted from the taxable assets, leaves net taxable assets in the sum of $74,136.52 instead of $20,778.64. We earnestly contend that no matter by what devious method of calculation and no matter what purpose the Court may have in view, **the ultimate result is a failure to allow the relator its full exemption on the sum of $94,000.00 represented by its Government bonds.**

B. **Due Process of Law and Equal Protection of the Laws.**

The Supreme Court of Missouri has always construed Sec. 6386, R. S. of Mo. 1919, as giving a deduction for the purpose of arriving at a just valuation for taxable purposes. It does not allow an exemption. So, in State ex rel. v. Schramm, 271 Mo., l. c. 227, 196 S. W. 21, referring to this statute, the Missouri Supreme Court said:

> **"Revenue laws sometimes permit taxpayers to deduct from the property to be taxed the debts owing by them. The allowance is not in any sense an exemption, but is made by way of reaching the just amount of taxable property."**

In State ex rel. Hyde v. Buder, 315 Mo. 791, l. c. 798, 287 S. W., l. c. 309, after holding that Sec. 6386 R. S. 1919, had not been repealed by other statutes, the Supreme Court en banc said:

> **"To hold that the reserves of a domestic insurance company are proper subjects of taxation would be**

to ignore the plain terms of the statute which we have just ruled has not been repealed."

In State ex rel. Missouri State Life Ins. Co. v. Gehner, 8 S. W. (2d) 1068, the Supreme Court of Missouri, l. c. 1072-1073, reaffirmed the principles of the Schramm case, and expressly held that said section 6386 is constitutional. The following cases decided by the Supreme Court of Missouri en banc were in fact companion cases with the case at bar, and all were argued together:

State ex rel. American Automobile Ins. Co. v. Gehner, 8 S. W. (2d) 1057;
State ex rel. Citizens' Ins. Co. v. Gehner, 8 S. W. (2d) 1066;
State ex rel. Indemnity Co. of America v. Gehner, 8 S. W. (2d) 1067;
State ex rel. International Life Ins. Co. v. Gehner, 8 S. W. (2d) 1067;
State ex rel. Missouri State Life Ins. Co. v. Gehner, 8 S. W. (2d) 1068;
State ex rel. Central States Life Ins. Co. v. Gehner, 8 S. W. (2d) 1073.

A reading of all these cases will show that it is the law of the State of Missouri that a domestic insurance company, under Sec. 6386, R. S. of Mo. 1919, having no tax exempt securities, may deduct its entire reserve. Indeed, in the following cases it was expressly held that no assessment could be made where the amount of the reserve exceeded the amount of the taxable assets:

State ex rel. Central States Life Ins. Co. v. Gehner; 8 S. W. (2d) 1073;
State ex rel. Missouri State Life Ins. Co. v. Gehner, 8 S. W. (2d) 1068;
State ex rel. Indemnity Co. of America v. Gehner, 8 S. W. (2d) 1067.

It follows from the foregoing decisions and from the opinion in this case that the Supreme Court of Missouri construes Section 6386, R. S. of Mo. 1919, as authorizing a domestic insurance company having no Government bonds to deduct all of its reserve, but if, as in the case of the relator in this action, the company owns tax-exempt Government bonds, it may not deduct all of its reserve, but must place its tax-exempt securities in its gross assets and prorate the reserve between its taxable and nontaxable assets, and thereby arrive, through the method of calculation set forth in the opinion herein, at the net taxable assets. Such method of calculation will always result in taxing, directly or indirectly, a portion of the company's tax-exempt securities, or at least in a refusal to permit the deduction of the entire amount of the reserve because of the ownership of tax-exempt securities. This means that the State of Missouri says to domestic insurance companies: **"If you invest a part of your assets in Government bonds we will refuse to grant you the right to deduct the full amount of your reserve."** This, in effect, means: **"If you invest your assets in Government bonds we will tax them."**

In the case at bar the effect of such a method of assessment is readily seen. If we leave out of consideration, as should be done, the $94,000.00 in Government bonds, the total personal assets of the relator would be $354,265.33. The admitted amount of reserve is $333,486.69, leaving net taxable assets in the sum of $20,778.64, as returned by the relator. The Supreme Court of Missouri has said to the relator, however, "Since you own Government bonds in the sum of $94,000.00, which you have deducted, you are not entitled to both the deduction and the exemption under the federal law," and because relator owns said Government bonds the Missouri court finds that its taxable assets are $74,136.52 instead of $20,778.64. **In other words, the relator is held to have $53,357.88 more net taxable assets because it owns $94,000.00 in Government bonds.**

Under the foregoing situation, it is plain that the opinion of the Supreme Court of Missouri herein would deprive the relator of its property without due process of law because relator's taxes are thereby increased beyond the plain terms of the statute, as construed by said Court, merely because of the circumstance that it owns tax-exempt Government bonds. Said opinion also denies to the relator the equal protection of the laws because, on account of the mere circumstance that the relator owns such exempt securities, a percentage of its reserve is held not to be deductible, whereas other domestic insurance

companies having no Government bonds would be permitted to deduct the full amount of such reserve.

The result is evident discrimination against companies owning Government bonds, and constitutes a denial of the equal protection of the laws. In Sunday Lake Iron Co. v. Wakefield, 247 U. S., l. c. 352, this Court said:

> "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."

Again, in Southern Railway Co. v. Green, 216 U. S., l. c. 412, this Court said:

> "The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation. If the plaintiff is a person within the jurisdiction of the State of Alabama within the meaning of the Fourteenth Amendment, it is entitled to stand before the law upon equal terms, to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon, other persons in a like situation."

As we have heretofore indicated, the Supreme Court of Missouri holds that a company owning no Government bonds is entitled to deduct the full amount of its reserve. Therefore, to the extent that the relator is made to pay taxes on property in excess of $20,778.64, it has secured

no benefit from the exemption allowed owners of Government bonds. The construction of Section 6386, R. S. of Mo. 1919, does not make said statute unconstitutional. It is only the construction of said statute when applied to companies owning Government bonds that renders it obnoxious to the Constitution. As said by Mr. Justice Butler in Quaker City Cab Co. v. Pennsylvania, 277 U. S., l. c. 402:

> **"As construed and applied by the state court in this case, the section violates the equal protection clause of the Fourteenth Amendment."**

On pages 7 and 8 of appellees' "Statement in Opposition to Jurisdiction on Appeal," filed in this cause, counsel for appellees are unduly concerned about the constitutionality of Section 6386, R. S. of Mo. 1919. This Court need not be concerned with what the Supreme Court of Missouri may hold on that question after the unlawful construction of said section by the Supreme Court of Missouri in this case has been condemned by this Court. There is nothing in State ex rel. American Automobile Ins. Co. v. Gehner, 8 S. W. (2d) 1057, which indicates that the giving to the relator and other companies owning Government bonds of the benefit of the federal exemption would make said section unconstitutional. As stated in the Schramm case, 271 Mo., l. c. 227, and State ex rel. v. Gehner, 8 S. W. (2d), l. c. 1072-1073, the deduction of the reserve allowed by section 6386 is not an exemption and does not render the

statute unconstitutional. The exemption from taxation of Government bonds is not a deduction granted by the Supreme Court of Missouri, but an exemption granted by the Federal Government. **Such bonds are exempt because the State of Missouri has no power to tax them.** There is no inequality in taxation because of the lack of power on the part of the State of Missouri to tax Government bonds. Every insurance company has the same right as relator to purchase Government bonds and carry them in its assets.

In Buist v. Charleston, 57 S. E. (S. C.) 862, the City of Charleston, under authority of an act of the Legislature, issued refunding bonds which were, by the provisions of said act, made exempt from taxation. It was sought to enjoin the issuance of the bonds on the ground that the exemption of the bonds resulted in unequal taxation, because those holding no bonds were required to pay higher taxes than those who owned bonds. The Court disposed of this objection by saying (l. c. 867):

> **"The objection stated in the eighth paragraph of the petition must be overruled, as such result is incidental to all exemptions of property from taxation. No case has been cited to show that such objection has ever rendered a statute unconstitutional."**

VI.

CONCLUSION.

It follows from the foregoing discussion that the construction and application of Section 6386, R. S. of Mo. 1919,

by the Supreme Court of Missouri in effect destroys the exemption from taxation granted by the Constitution and statutes of the United States to owners of Government bonds, deprives relator of its property without due process of law, and denies to relator the equal protection of the laws, as guaranteed by the Fourteenth Amendment to the Constitution of the United States and constitutes an unlawful discrimination against the relator by the refusal to permit it to deduct the full amount of its reserve because of the mere circumstance that it owned as a part of its assets tax-exempt Government bonds. If the contention of the appellant herein that this Court has jurisdiction on appeal should be found incorrect, it certainly follows that jurisdiction should be taken on certiorari.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the constitutional and statutory rights of the appellant or relator may be preserved, and that to such an end a writ of certiorari should be granted, and this Court should review the decision of the Supreme Court of Missouri and finally reverse it.

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